

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT
November 8, 2012 Meeting
Agenda Item 3

SUBJECT: Chizhik Variance (PA2012-113)

- Variance No. VA2012-005

LOCATION: 20361 Cypress Street

APPLICANT: Gennady and Marina Chizhik

PLANNER: Kay Sims, Assistant Planner

PROJECT SUMMARY

The applicant is requesting a variance to allow existing hedges and block walls topped with lattice panels, which exceed the Zoning Code height limits within setbacks (sides - 6 feet, front – 42 inches), to remain in place along both side property lines.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ approving Variance No. VA2012-005 with the attached Findings and Conditions (Attachment No. PC 1).



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential Detached (RS-D)	Santa Ana Heights Specific Plan (SP-7) Residential Equestrian (REQ)	Single-unit dwelling
NORTH	(RS-D)	(SP-7), (REQ)	Single-unit dwellings/equestrian
SOUTH	(RS-D)	(SP-7), (REQ)	Single-unit dwellings/equestrian
EAST	(RS-D)	(SP-7), (REQ)	Single-unit dwellings
WEST	General Commercial Office (CO-G)	Santa Ana Heights Specific Plan (SP-7) Business Park (BP)	Plant Nursery and Greenhouses

INTRODUCTION

Project Setting

The subject property is located on the west side of Cypress Street in the Residential Equestrian (REQ) land use district within the Santa Ana Heights Specific Plan (SP-7). It is 19,800-square-feet in area, rectangular in shape (66 feet wide by 300 feet deep), and similar in size and shape to neighboring properties along Cypress Street. Although generally flat, the grade along the southerly side property line is lower than the adjacent property (20371 Cypress Street), and the grade along the northerly side property line is higher than the adjacent property (20351 Cypress Street). The front property line is separated from Cypress Street (15 feet) by a portion of the equestrian trail located along the west side of Cypress Street between Mesa and Orchard Drives. The property is developed with a two-story, 7,687-square-foot, single-family home, and an 875-square-foot detached, three-car garage located at the front of the property. The home was constructed in 2010 and was subject to the standard setbacks for the REQ, which are: front – 20 feet, sides – 5 feet, rear – 25 feet.

The properties adjacent to the side property lines have previously (pre-annexation) been developed with single-family dwellings and various, accessory structures and “out-buildings” associated with the keeping of horses and various domestic animals. Some of the structures are located within the side and front setbacks and are higher than allowed by the Zoning Code. The property abutting the rear property line is located within the Business Park (BP) land use district and is developed as a commercial nursery. The existing structures on that site consist of a commercial building at the front, various accessory structures, and two greenhouses (near the rear property line).

Background

In 2009, prior to construction of the new home on the subject property, City building permits were issued to the applicant to construct 6-foot-high block walls, centered on the rear and side property lines, which is the maximum height allowed within rear and side setbacks. The height of walls constructed complied with the height limits in effect at that time and the permits were finalized in 2009.

During construction of the new home in 2010, the height of the property line block walls was increased without permits; additionally, lattice panels (4 feet by 8 feet) were also attached to portions of the block walls along the side property lines; and, finally, hedges were planted adjacent to the block walls along a portion of the northerly side property line and hedges and trees along the entire length of the southerly property line. Subsequently, the trees have been allowed to grow together into a hedge (see Attachment No. PC 3).

Although the REQ district regulations limit the height of walls to six feet within rear setbacks, the BP land use district requires construction of a minimum 6-foot-high slump block wall along property lines abutting the REQ district to provide a buffer between the two districts. The height of the block wall at the rear property line was increased from six to eight feet by the applicant without permits during construction of the new home. Retention of the block wall at its current height is allowed by the Zoning Code; therefore, approval of a variance is not needed. However, a revision to the original building permit is required.

Project Description

The applicant is requesting a variance to allow the existing hedges and block walls topped with lattice panels, which exceed the Zoning Code height limits within setbacks (sides – 6 feet, front – 42 inches), to remain in place along both side property lines. The varying height of the block walls/lattice panels, and hedges requested are detailed in the discussion below.

DISCUSSION

Analysis

Zoning Code

Pursuant to Zoning Code Section 20.30.040: (Fences, Hedges, Walls, and Retaining Walls), the maximum height within setbacks are: front - 42 inches, side – 6-feet, and rear – 6-feet. This section also requires that the maximum height be measured from the existing grade where the wall or hedge is located. Because the block walls are centered on the side property lines, the maximum height is measured from the lowest grade of the two properties. The northerly side was measured from the adjacent property, which has a lower natural grade, and the southerly side was measured from the subject property, which has a lower natural grade than the adjacent property.

Section 20.30.130: (Traffic Safety Visibility Area) limits the height of walls, fences, and hedges to 30 inches within 5 feet of an intersecting public right-of-way and a driveway. The equestrian trail is considered a public right-of-way.

Front Setback

Northerly side property line

The 20-foot-front-setback is located along Cypress Street. The existing grade on the adjacent property to the north is slightly lower than the subject property. As illustrated in Table 1, the height of the block wall on the adjacent property exceeds the allowed Zoning Code height of 42 inches by 4 inches, while the height on the subject property

complies with code height limit; with the exception of the traffic safety visibility triangle, which is 11 inches higher than allowed.

Southerly side property line

The maximum height of the block wall located in within the front setback on each property exceeds the allowed Zoning Code height of 42 inches by 3 inches and 15 inches within the traffic safety visibility area. The applicant is requesting to retain the height of the hedge, which is approximately 4 feet, 6 inches higher than allowed in the front setback and 5 feet, 6 inches higher than allowed in the traffic safety visibility area.

Table 1: Front Setback – Maximum Height Requested (As Existing)

Location:	Top of Block wall (rounded up)	Top of Hedges/Trees (rounded up)	Zoning Code Standard
Northerly Side PL:			
Subject Property (20361 Cypress St.)	34" - 41"	34" - 41"	42", 30"*
Adjacent Property (20351 Cypress St.)	45" - 46"	N/A	"
Southerly Side PL:			
Subject Property (20361 Cypress St.)	40" - 45"	8'	"
Adjacent Property (20371 Cypress St.)	40" - 45"	N/A	"

*Traffic safety visibility area (5 feet of an intersecting public right-of-way and a driveway)

Side Setbacks

Northerly Side Property Line

Side setbacks begin at the front setback line. The existing grade on the subject property ranges between 1 foot and 2 feet higher than the existing grade on the adjacent property. The maximum height of the block wall on the adjacent property ranges between approximately 6 1/2 feet to approximately 7 1/2 feet. On the subject property, the block wall height ranges between approximately 5 feet and 6 feet and complies with the height allowed by the Zoning Code. The overall height of the block wall/lattice panels ranges between approximately 9 feet and 10 feet on the adjacent property (lower existing grade) and from 8 feet to 8 1/2 feet on the subject property. The hedges extend from the 20-foot-setback approximately 57 linear feet to the northerly, front corner of the existing home. The hedges in this area have been reduced to the height of the top of the lattice panels.

Southerly Side Property Line

As illustrated in Table 3, the maximum height of the block wall along the southerly property line ranges between approximately 6 feet and 7 feet, 6 inches on both properties. This is due to the fact that, even though the existing grade on the subject property is generally lower, the existing grade of the adjacent property is uneven and is lower or equal to the subject property in some areas. The block wall increases in height from the front of the property to the rear by stepping-up at various points along the side property line, which correspond to the location of the existing, accessory structures and “out-buildings” located in the side setbacks along the side property line of the adjacent property (see Attachment PC 3 and PC 4).

Lattice panels have been attached to this block wall as well. The resulting overall height of the block wall/lattice panels ranges between approximately 8 1/2 feet to approximately 11 feet on the subject property.

The hedge adjacent to the block wall on the subject property side ranges in height between approximately 8 1/2 feet to approximately 18 feet. The height of the hedge is approximately equal to the top of the corresponding, adjacent lattice panels and steps-up as the height of the lattice panels increases. The 18-foot-high area of the hedge is approximately 8-feet-higher than the top of the corresponding, adjacent lattice panels. It consists of the trees that have been allowed to grow into a hedge (“tree/hedge”) and is located facing the southerly side patio area and second floor balcony of the home and extends to the rear property line.

Table 2: Side Setbacks – Maximum Height Requested (As Existing)

Location	Top of Block wall (rounded up)	Top of Lattice (rounded up)	Top of Hedges	Zoning Code Standard
Northerly Side PL				
Subject Property (20361 Cypress St.)	5' – 6'	8' - 8 ½'	8' - 8 ½'	6'
Adjacent Property (20351 Cypress St.)	6 ½' – 7 ½'	9' – 10'	N/A	6'
Southerly Side PL				
Subject Property (20361 Cypress St.)	6' – 7 ½'	8 ½' – 11'	9' – 18'	6'
Adjacent Property (20371 Cypress St.)	7' – 7 ½'	8' ½' - 10'	N/A	6'

Variance Findings

Pursuant to Section 20.52.090.F of the Zoning Code, the Planning Commission must make the following findings before approving the aforementioned variance:

1. *That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*
2. *That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*
3. *That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*
4. *That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*
5. *That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*
6. *Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

In addition to single family residential development, the REQ land use district permits the keeping a limited number of horses, various other domestic farm animals, and dogs. The side setbacks for this land use district are larger in area than those required for most residential zoning districts within the City. The purpose of the larger setbacks is to help prevent potential conflicts between properties developed with single family homes and those developed with equestrian/and various agricultural uses. Although the minimum required side setback is 5 feet, some of the structures on the adjacent properties are located within the side setback (see Attachment PC 3). Some of the structures are also exceed the 6-foot-height-limit allowed within the side setbacks and the 42-inch-height-limit in the front setback.

The block walls originally built complied with the 6 foot maximum height allowed by the Zoning Code, as measured from the lowest grade. During construction of the new home, however, the applicant determined that it was necessary to increase the height of the block walls and, subsequently, attach lattice panels and plant hedges to minimize the related negative impacts of the uses and accessory structures on the adjacent

properties. The increased overall height of the block wall and lattice panels, and the hedges will allow the applicant and any future owners to enjoy the use of the property by creating a visual screen from the adjacent developments and provide a buffer from the noise and dust. The block walls/lattice panels, and hedges are well designed and should not prove detrimental to the adjacent neighbors or other persons in the vicinity.

The hedges and increased height of the block wall within the front setback area provide privacy across the front of the property between the front property line, the horse trail, and Cypress Street. However, the height of the hedge on the southerly side could obstruct the view of vehicular, pedestrian, and/or equestrian traffic when exiting the property.

With the exception of the request to retain the height of the hedge within the front setback on the southerly side and the height of the approximately 18-foot-high tree/hedge along the southerly side, (staff believes that the findings for approval of the applicant's request for a variance can be made and supports this determination with the facts outlined in the attached Resolution of Approval (Attachment No. PC 1).

Therefore, staff recommends that the Planning Commission approve the applicant's request, subject to the conditions attached to the Resolution of Approval (Attachment No. PC 1), which include lowering the height of the hedge located within the front setback on the southerly property line to the height of the adjacent block wall, and within the traffic safety site visibility area along both side property lines (first 5 feet) to 30 inches, and lowering the height of the 18-foot-high "tree/hedge" along the southerly side to the height of the adjacent lattice panels.

Alternatives

Should the Planning Commission determine that the findings cannot be made for the variance, as requested and recommended by staff, the Planning Commission may deny the request or modify the approval by requiring any of the following: lowering the height of the block wall(s), removing the lattice panels, lowering the height of the hedge(s), trimming between the trees, or removal of some of the trees.

If the Planning Commission decides to deny any element of the project that staff recommends for approval, the Planning Commission must identify findings for denial. Should the Planning Commission take action on any alternatives, staff will return with a revised resolution for consideration at the next available meeting.

Environmental Review

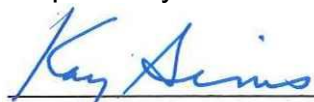
The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class

3 (New Construction or Conversion of Small Structures. The project involves allowing retention of block walls, lattice panels, hedges, and trees along the side property lines that exceed the height permitted by the Zoning Code within the front, side, and rear setbacks.

Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Kay Sims, Assistant Planner

Submitted by:



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- | | |
|------|---|
| PC 1 | Draft Resolution of Approval with Findings and Conditions |
| PC 2 | Draft Resolution of Denial |
| PC 3 | Photos/Correspondence Received |
| PC 4 | Project plans |

Attachment No. PC 1

Draft Resolution of Approval with
Findings and Conditions

RESOLUTION NO. #####
A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF NEWPORT BEACH APPROVING VA2012-005 FOR A
VARIANCE TO ALLOW EXISTING HEDGES AND BLOCK
WALLS TOPPED WITH LATTICE PANELS, WHICH EXCEED
THE ZONING CODE HEIGHT LIMITS WITHIN SETBACKS
(SIDES – 6 FEET, FRONT – 42 INCHES), TO REMAIN IN PLACE
ALONG THE SIDE PROPERTY LINES LOCATED AT 20361
CYPRESS STREET (PA2012-113)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Gennady and Marina Chizhik, with respect to property located at 20361 Cypress Street and legally described as the Northeasterly one-half of Lot 158 Tract 706, requesting approval of a variance.
2. The applicant is requesting a variance to allow the existing hedges and block walls topped with lattice panels, which exceed the Zoning Code height limits within setbacks (sides – 6 feet, front – 42 inches), to remain in place along the side property lines. On the southerly side, the applicant requests that the hedge located within the southerly side setbacks, and the hedge within the 20-foot-front setback be allowed to remain at the existing height as indicated on the project plans.
3. The subject property is located within the Santa Ana Heights Specific Plan, Residential Equestrian land use district (SP-7, REQ) and the General Plan Land Use Element category is Single-Unit residential Detached (RS-D).
4. The subject property is not located within the coastal zone.
5. In 2009, prior to construction of the new home on the subject property, City building permits were issued to the applicant to construct 6-foot-high block walls, centered on the rear and side property lines, which is the maximum height allowed within rear and side setbacks.
6. During construction of the new home, the height of the property line block walls was increased without permits; additionally, lattice panels (4 feet by 8 feet) were also attached to portions of the block walls along the side property lines; and hedges were planted adjacent to the block walls along a portion of the northerly side property line and hedges and trees, that have been allowed to grow together into a hedge (“tree/hedge”), were planted along the entire length of the southerly side property line
7. A public hearing was held on November 8, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code.

Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures).
2. The project involves allowing retention of block walls, lattice panels and hedges that exceed the height permitted by the Zoning Code within the front, side, and rear setbacks.

The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.090 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

- A-1. Because the REQ land use district within the Santa Ana Heights Specific Plan allows the keeping of a limited number of horses, various domestic farm animals, and dogs, the Zoning Code requires larger side and rear setbacks than required within some other single-family zoning districts within the City. The larger setbacks intended help to minimize possible negative impacts related to those allowed uses on adjacent properties.
- A-2. The properties adjacent to the subject property have previously been developed (pre-annexation) with single-family dwellings and various, existing accessory structures and "out-buildings" associated with the keeping of horses and various domestic animals and other uses.

- A-3. The existing grade of the subject property along the northerly side property line ranges between 1 foot and 2 feet higher than the existing grade on the adjacent property. Since the maximum height of the block wall is measured from the existing grade, the 6-foot-block-wall originally constructed did not provide adequate privacy or minimize the negative impacts related to the use and non-conforming structures located within the side setback along the side property line on the adjacent property (20351 Cypress).
- A-4. The subject property is lower in existing grade than the adjacent property (20371 Cypress) along the southerly side property line. The existing grade on the adjacent property is uneven and is more than 1-foot-higher than the subject property in some areas. There are various, existing accessory structures located within the side setbacks along the side property. Some of the structures are higher than the 6-foot-height limit allowed by the Zoning Code.

Finding:

- B. That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Fact in Support of Finding:

- B-1. Strict compliance of the Zoning Code would require that the block walls, lattice panels, and hedges be removed or reduced to a maximum height of 6 feet within the side and rear setbacks and 42 inches within the front setback. Neither of these requirements would allow the opportunity to establish a sufficient barrier between the subject property and the adjacent neighbors, which would adequately address the issue of privacy and concerns regarding noise and dust related to the uses of the neighboring properties. The existing height of the block walls/lattice panels, and hedges have proven beneficial in addressing these concerns.
- B-2. The negative impacts resulting from strict compliance with the Zoning Code would deprive the owner and any future owner of the enhanced aesthetics and privacy the enjoyed by other properties located within the vicinity and throughout the City.
- B-3. Many of the properties in the vicinity have previously (pre-annexation) been developed with walls and hedges that are located along the side property lines similar in height as those requested with the variance. Those walls and hedges have not proven to be detrimental to adjacent neighbors or other persons in the vicinity.
- B-4. The existing block walls/lattice panels, and hedges are well designed and should not prove detrimental to the adjacent neighbors or other persons in the vicinity.

Finding:

C. That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.

Fact in Support of Finding:

C-1. Allowing for the increased height of the block walls/lattice panels, and hedges will assist in alleviating the negative impacts and concerns on the subject property related to the uses and location of the existing accessory structures and “out-buildings” on the adjacent properties. This will afford a higher level of enjoyment and use of the subject property by the applicant or future property owners, which is consistent with the intent of the Zoning Code to promote the orderly growth and development of the City, to promote and protect the public health, safety, peace, comfort and general welfare, to protect the character and social and economic vitality of all districts within the City, and to assure the orderly and beneficial development of such areas.

Finding:

D. That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

Facts in Support of Finding:

D-1. Granting the variance request will preserve the applicant’s right to enjoy a level of privacy comparable to other properties within the SP-REQ District and does not constitute a grant of special privilege inconsistent with the limitations on the other properties in the vicinity and in the same zoning district.

Finding:

E. That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

Facts in Support of Finding:

E-1. The existing block walls/lattice panels, and hedges are well designed and should not prove detrimental to the adjacent neighbors or other persons in the vicinity.

E-2. As conditioned, all changes to the originally constructed block walls must be approved by the Building Department and new building permits reflecting the changes must be issued.

- E-3 As conditioned, the reduction of the 18-foot high hedge to a maximum height equal to the top of the adjacent lattice panels will ensure adequate light and air for the neighboring property.
- E-4. As conditioned, reducing the height of the hedge on the southerly side property line to 30 inches within the 5-foot-traffic-safety-visibility-area required by the Municipal Code and to the height of the existing, adjacent block wall within the remaining 15 feet of the front setback, will increase visibility of the equestrian trail and Cypress Street when exiting property.

Finding:

F. Granting of the Variance will not be in conflict with the intent and purpose of Section 20.52.090 of the Zoning Code, the Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

- F-1. The granting of this variance will not conflict with the Land Use Element of the General Plan, which designates the site for Single-Unit Residential Detached (RS-D) use, or the Zoning Code, which designates the site as located within the Residential Equestrian land use district (REQ) of the Santa Ana Heights Specific Plan (SP-7). The block walls/lattice panels and hedges are accessory to the dwelling unit and are therefore consistent with these designations and will not change the use of the property.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Variance Permit No. VA2012-005, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 8TH DAY OF NOVEMBER, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Michael Toerge, Chairman

BY: _____
Fred Ameri, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. VA2012-005 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. Within 60 days after the effective date of the action for Variance No. VA2012-005, the property owner or an authorized representative shall either reduce or remove the hedge within the front setback on the southerly side property line to the height of the existing block wall in that area.
5. Within 60 days after the effective date of the action for Variance No. VA2012-005, the property owner or authorized representative shall either remove or reduce the height of the block walls and hedges within the first 5-feet along the side property lines to a height of 30 inches as required by Section 20.30.130: Traffic Safety Visibility Area of the Municipal Code. The reduction in height shall be subject to the review and approval of the City Traffic Engineer.
6. Within 60 days after the effective date of the action for Variance No. VA2012-005, the property owner or an authorized representative shall either reduce or remove the additions to the block wall/and or lattice panels or obtain a building permit for the as-built rear and side property line walls from the City's Building Division of the Community Development Department. The construction plans for the as-built walls must comply with the most recent, City-adopted version of the California Building Code.
7. Within 60 days after the effective date of the action for Variance No. 2012-005, the property owner or authorized representative shall reduce the height of the hedge row along the southerly property to the height of the top of the block wall/lattice. Trees higher than the top of lattice are allowed within the side setback areas as long as they don't become a hedge as defined in the zoning code.
8. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
9. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees,

and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Chizhik Variance** including, but not limited to, the **VA2012-005 (PA2012-113)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 2

Draft Resolution of Denial

RESOLUTION NO. ####
A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF NEWPORT BEACH DENYING A REQUEST FOR
VARIANCE NO. VA2012-005 TO ALLOW EXISTING HEDGES
AND BLOCK WALLS TOPPED WITH LATTICE PANELS, WHICH
EXCEED THE ZONING CODE HEIGHT LIMITS WITHIN
SETBACKS (SIDES – 6 FEET, FRONT – 42 INCHES), TO
REMAIN IN PLACE ALONG THE SIDE PROPERTY LINES
LOCATED AT 20361 CYPRESS STREET (PA2012-113)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Gennady and Marina Chizhik, with respect to property located at 20361 Cypress Street and legally described as the Northeasterly one-half of Lot 158 Tract 706, requesting approval of a variance.
2. The applicant is requesting a variance to allow the existing hedges and block walls topped with lattice panels, which exceed the Zoning Code height limits within setbacks (sides – 6 feet, front – 42 inches), to remain in place along the side property lines. On the southerly side, the applicant requests that the hedge located within the southerly side and rear setbacks, and the hedge within the 20-foot-front setback be allowed to remain at the existing height as indicated on the project plans.
3. The subject property is located within the Santa Ana Heights Specific Plan, Residential Equestrian land use district (SP-7, REQ) and the General Plan Land Use Element category is Single-Unit residential Detached (RS-D).
4. The subject property is not located within the coastal zone.
5. In 2009, prior to construction of the new home on the subject property, City building permits were issued to the applicant to construct 6-foot-high block walls, centered on the rear and side property lines, which is the maximum height allowed within side setbacks.
6. During construction of the new home, the height of the property line block walls was increased without permits; additionally, lattice panels (4 feet by 8 feet) were also attached to portions of the block walls along the side property lines; and hedges were planted adjacent to the block walls along a portion of the northerly side property line and hedges and trees, that have been allowed to grow together into a hedge (“tree/hedge”), were planted along the entire length of the southerly side property line
7. A public hearing was held on November 8, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code.

Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. FINDINGS FOR DENIAL

The Planning Commission may approve a variance application only after making each of the required findings set forth in Section 20.52.090: (Variances) of the Municipal Code. In this case, the Planning Commission denied the variance application for the following:

1. Although the walls are existing and have not proven detrimental to the property or neighborhood, their existence does not set a precedent for approval of the proposed variance. Furthermore, they are neither required by code or necessary for the enjoyment of a substantial property right.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby denies VA2012-005, hereby denies the application.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 8 DAY OF NOVEMBER, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

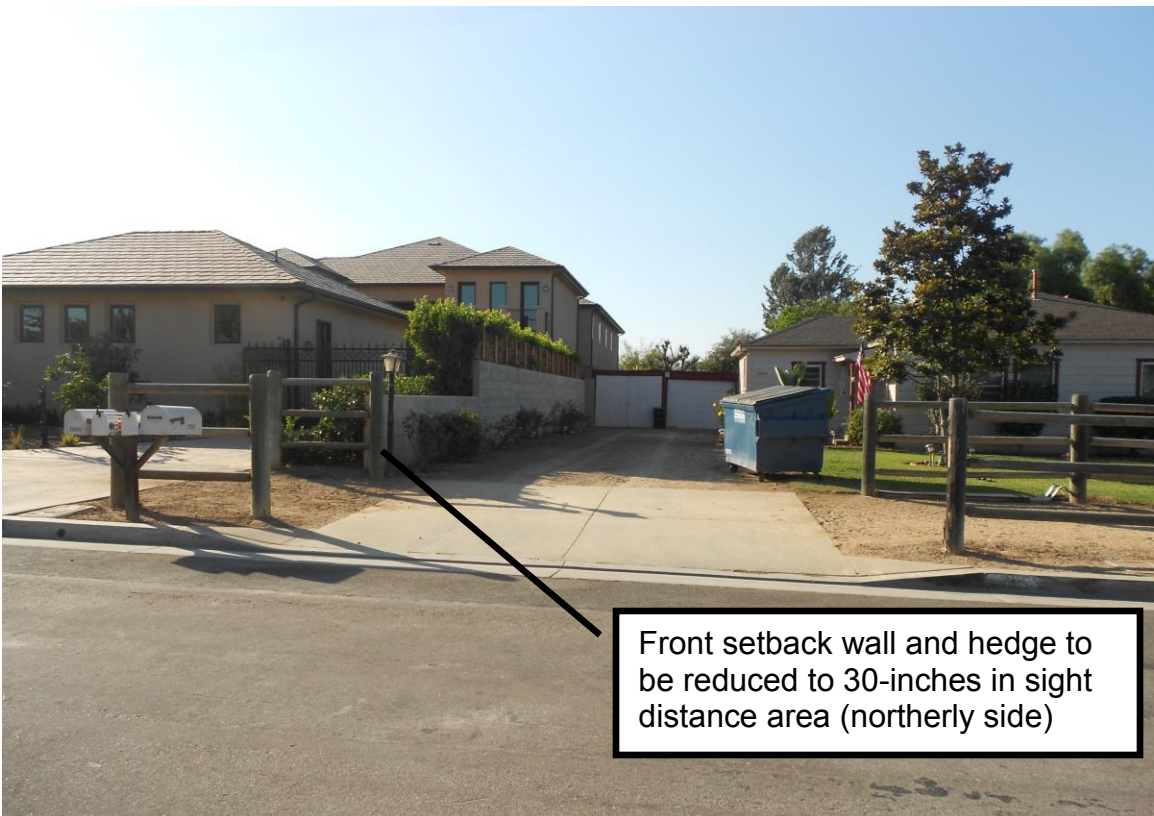
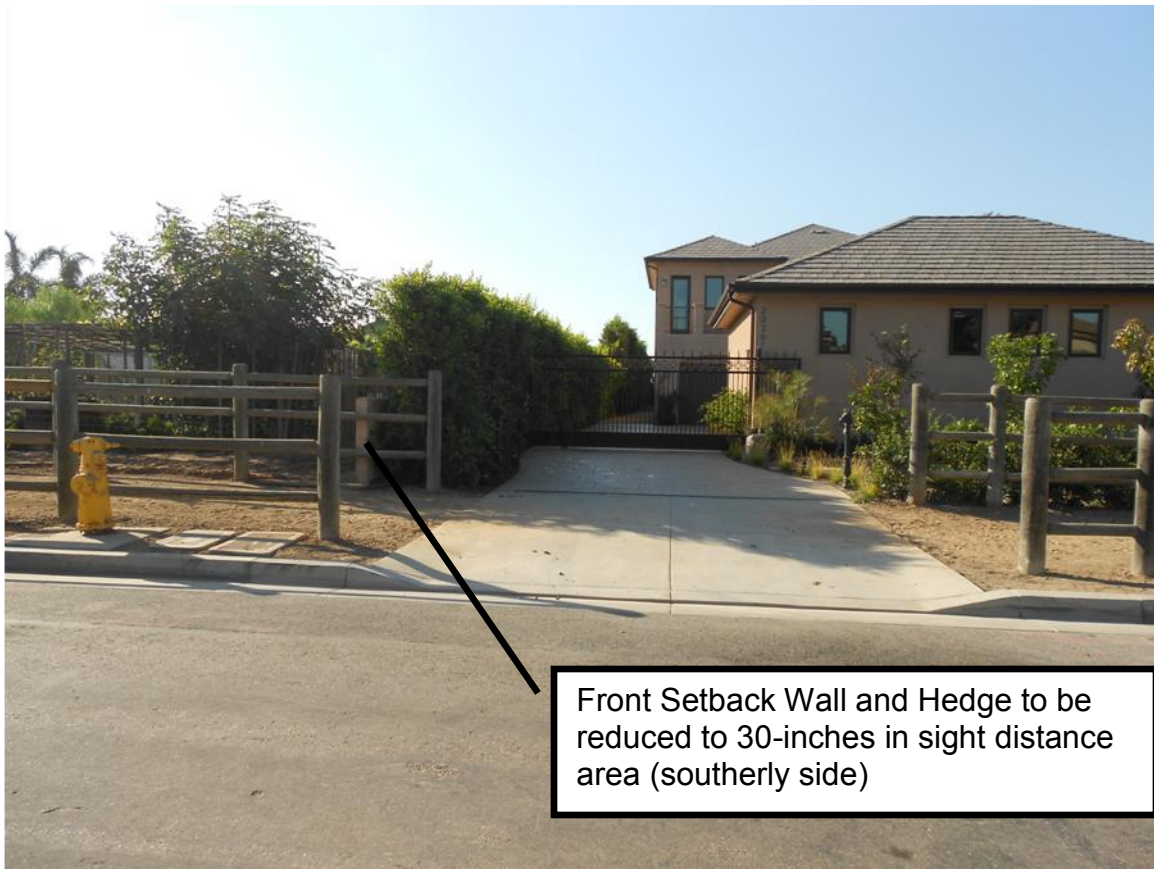
BY: _____
Michael Toerge, Chairman

BY: _____
Fred Ameri, Secretary

DRAFT

Attachment No. PC 3

Photos and Correspondence Received







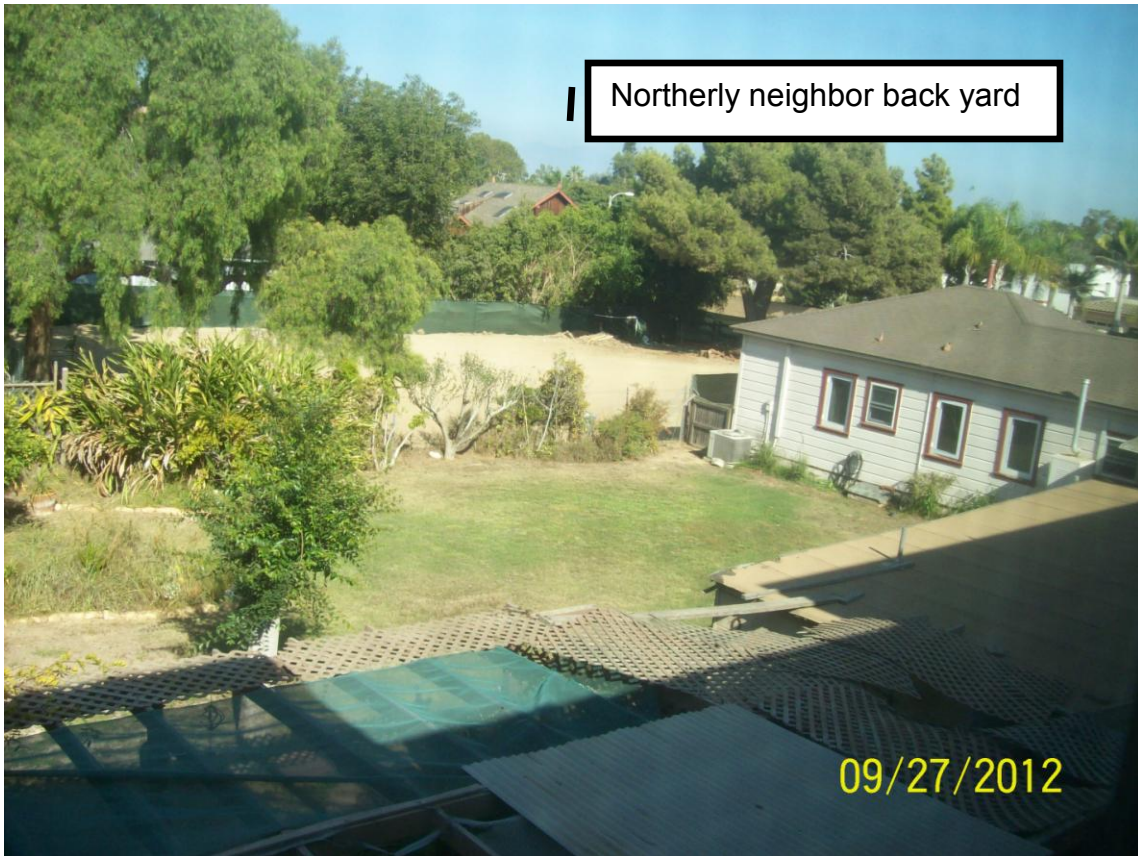
Northerly side wall and
lattice

09/27/2012

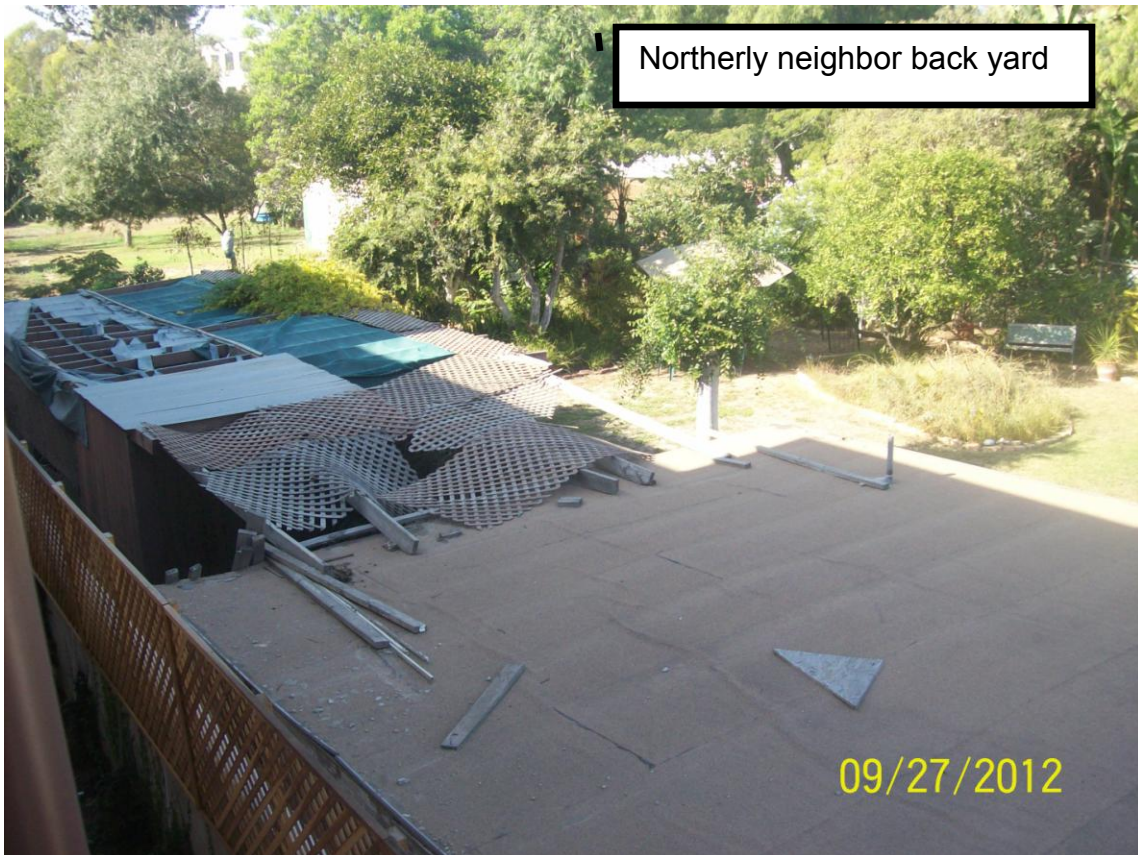


Northerly side.
Typical wall/lattice

09/27/2012



Northerly neighbor back yard



Northerly neighbor back yard



Southerly side 18 foot high hedge

Southerly side wall/lattice/hedge

09/27/2012



Southerly wall/lattice/18 foot high hedge.

09/27/2012



18 foot high hedge with neighbors buildings beyond



Southerly neighbor back yard

18 foot high hedge



I have no objections to the height of the constructed wall, including trellis and planted trees located at 20361 SW Cypress, Newport Beach, CA 92660. They are beneficial to both my neighbor and I in minimizing airplane noise, absorbing dust, and ensuring privacy.

Name: Robert Steve Stenders

Date: 10-14-12

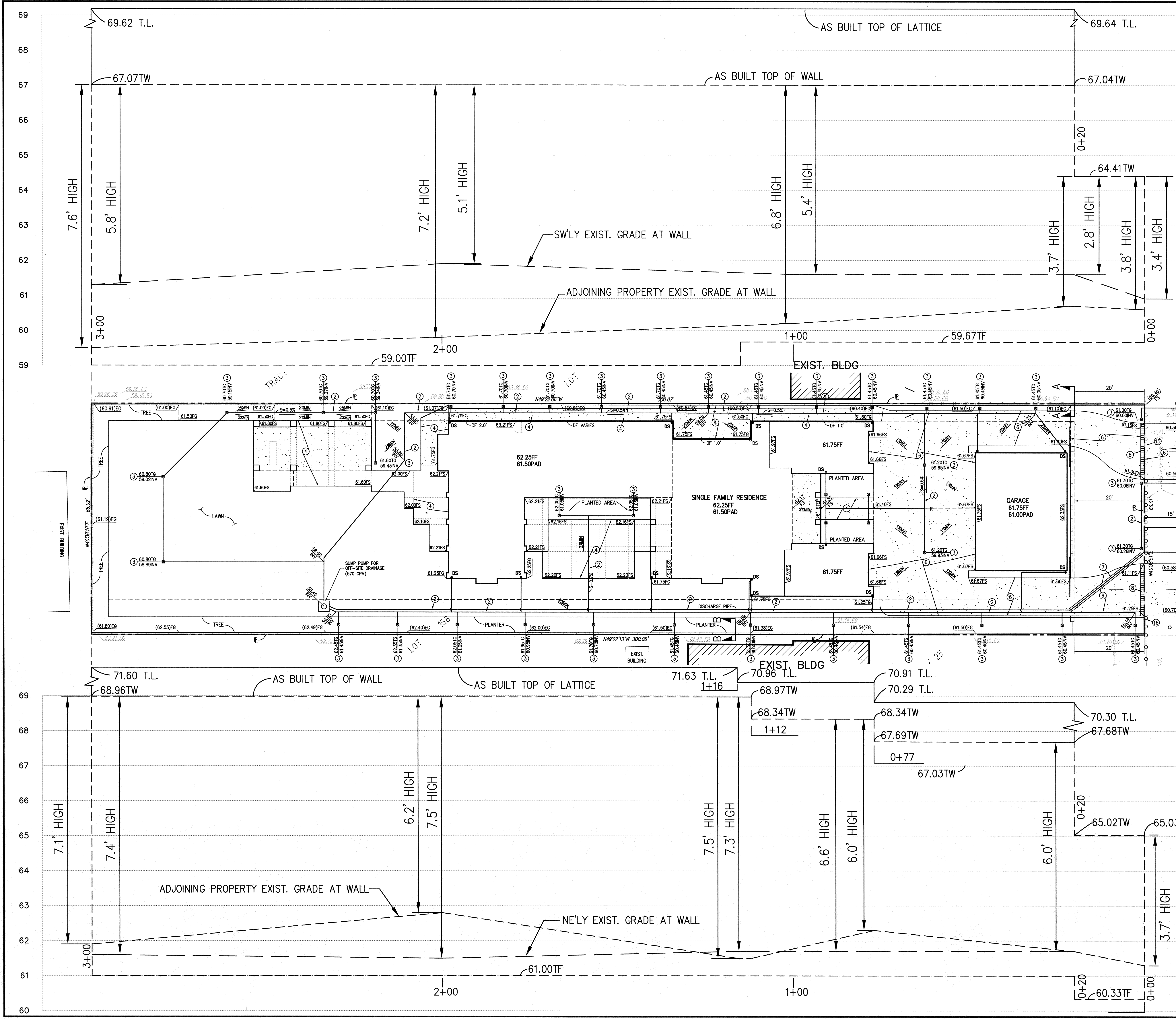
Signature: Robert Stenders

Address: 20351 SW CYPRESS

RECEIVED BY
COMMUNITY
OCT 16 2012
DEVELOPMENT
CITY OF NEWPORT BEACH

Attachment No. PC 4

Project Plans



SECTION A-A
NOT TO SCALE

STA.	N.G. SW'LY	N.G. NE'LY	T.W.	LATTICE	HEDGE
0+00	61.0	60.6	64.41	Ø	64.41
0+20	61.6	60.7	64.41	69.64	69.64
1+00	61.6	60.2	67.00	69.62	69.62
2+00	61.9	59.8	67.01	69.60	69.60
3+00	61.3	59.5	67.07	69.62	69.62

SCALE : 1"=10'

SECTION B-B
NOT TO SCALE

STA.	N.G. SW'LY	N.G. NE'LY	T.W.	LATTICE	TREE	HEDGE
0+00	61.3	61.3	65.03	Ø	Ø	69.5
0+20	61.7	61.7	65.02	70.30	Ø	70.3
0+77	62.3	61.7	67.68	70.29	Ø	70.3
1+12	61.5	61.7	68.34	70.91	Ø	70.5
1+16	61.5	61.7	68.97	70.96	Ø	70.5
2+00	62.8	61.5	68.97	71.61	79.5	Ø
3+00	61.9	61.6	68.96	71.60	78.6	Ø

SCALE :
HORIZ. 1"=10'
VERT. 1"=1'

CITY OF NEWPORT BEACH

WALL PROFILE

20361 SW CYPRESS ST., NEWPORT BEACH, CA.

CHECKED: _____ DATE OF SURVEY: 10-04-2012 DATE: 10/31/12

DESIGNED: _____

DRAWN: _____

SHEET 1 OF 1

ADDITIONAL
MATERIALS
RECEIVED

Chizhik Variance

20361 Cypress Street

Planning Commission
Public hearing
November 8, 2012



Vicinity Map



Request and Recommendation



Variance :

to retain existing block walls/lattice/hedges -

- located along both side property lines
- exceed height limits allowed in front and side setbacks

Recommendation:

approval with conditions to -

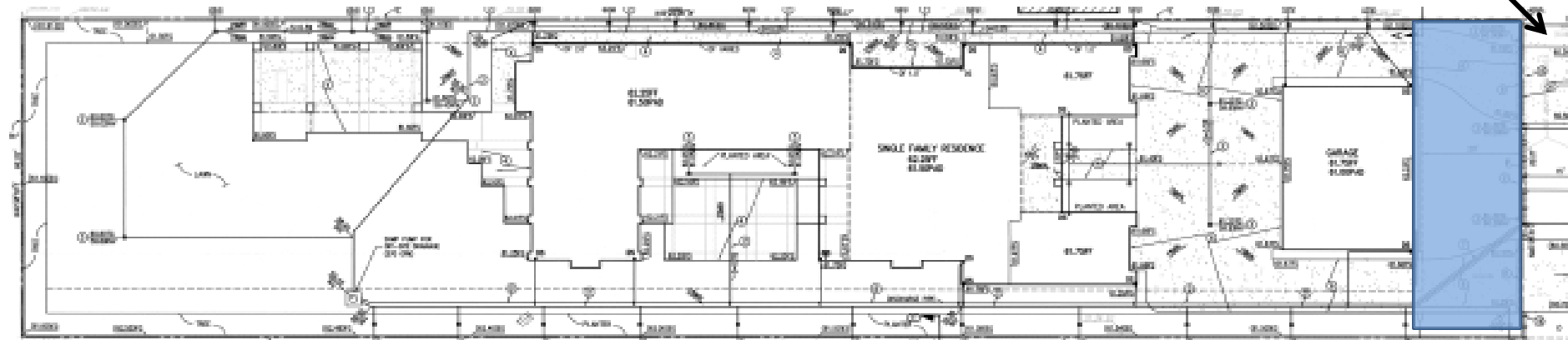
- front setback - lower height of hedges to height of adjacent walls
- traffic safety area (first 5 feet) lower height of walls/hedges to 30 inches
- southerly side setback lower height of 18 foot hedge to height of adjacent lattice

Site Plan



Northerly side – 20351
Cypress

Horse trail/Cypress Street



Southerly side – 20371 Cypress

Site Photographs



Front Setback (northerly side) –
wall/hedge to be reduced to 30
inches/first 5 feet

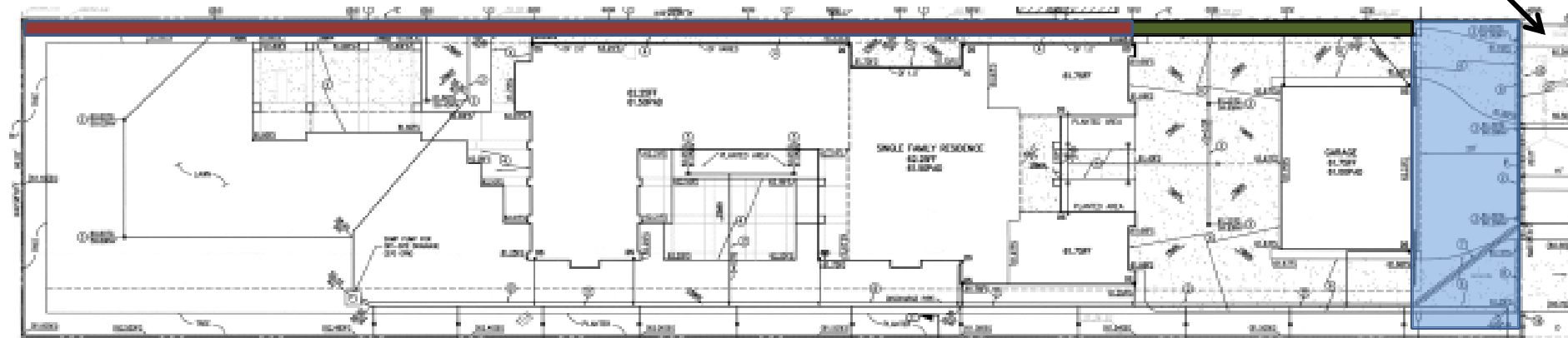
Site Photographs



Front Setback (southerly side) –
wall/hedge to be reduced to 30
inches/first 5 feet



Horse trail/Cypress Street



7

Site Photographs



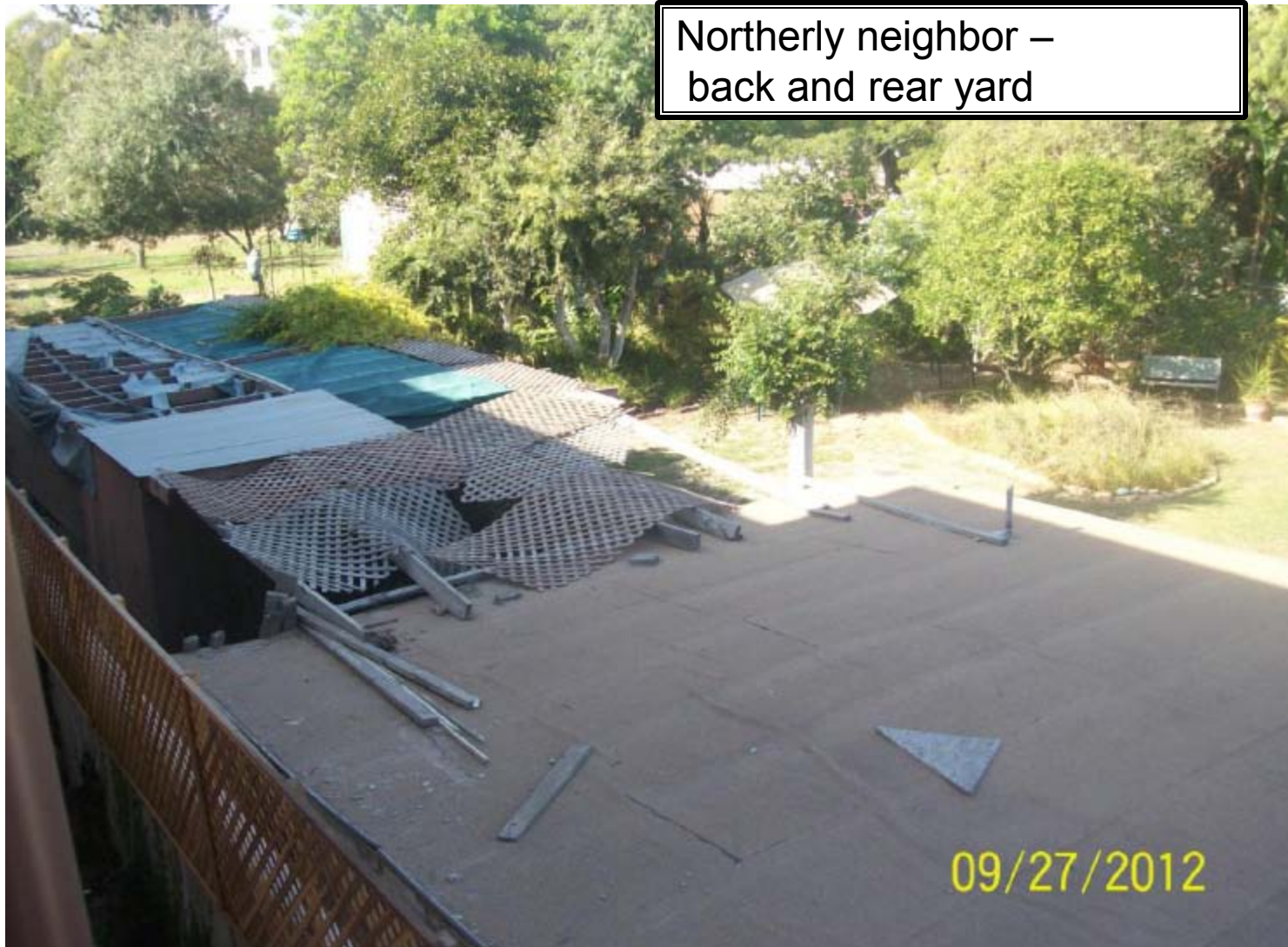
Northerly side –
Wall/lattice/hedge

Site Photographs



Northerly side -
wall/lattice

Site Photographs

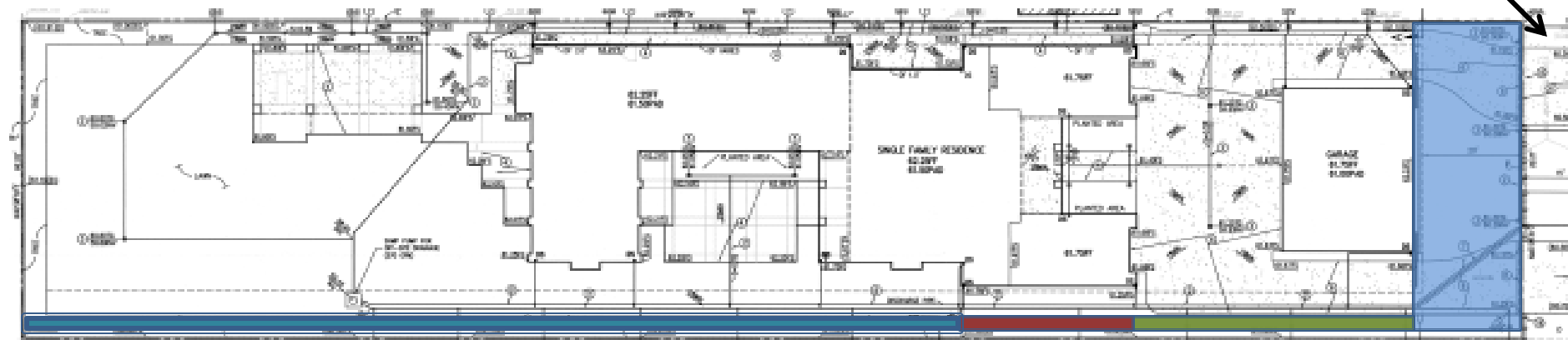


Site Plan



Northerly side – 20351
Cypress

Horse trail/Cypress Street



Southerly side – 20371 Cypress

Site Photographs



Southerly side
wall/lattice/18 foot hedge



Southerly side
wall/lattice/hedge

Site Photographs



Southerly side from rear yard -
wall/lattice/18 foot hedge



Site Photographs



Site Photographs



Southerly side from 2nd floor –
wall/lattice/18 foot hedge



Site Photographs



View from 2nd floor –
toward southerly property

Wall/lattice/18 foot
hedge





For more information contact:

Kay Sims
949-644-3237
ksims@newportbeachca.gov
www.newportbeachca.gov



CITY OF NEWPORT BEACH
CALIFORNIA



20361 SW Cypress

Request for Variance



South Side – 20371 Cypress

View of adjacent property, prior to lattice
& trees



South Side – 20371 Cypress

View after lattice and planting of trees



South Side – 20371 Cypress

View of adjacent property, prior to lattice
& trees



South Side – 20371 Cypress

View of adjacent property



South Side – 20371 Cypress

View of adjacent property during
construction of our home



South Side – 20371 Cypress
Objects hanging down from adjacent
property into our backyard



South Side
Present-day View



South Side - 20371 SW Cypress

Trailer in adjacent yard which caught on
fire



South Side
Present-day View



South Side – 20371 Cypress



South Side – 20371 Cypress



South Side – 20371 Cypress

Present-day View



Front Set-Back on North Side

Present-day



Front Set-Back South Side



Front Set-Back on South Side



**Horse Trail North – South Side Front
of Property**
Present-day

To: PLANNING_COMMISSION
Subject: Additonal Materials Received

Item No. 3a: Additional Materials Received
Planning Commission November 8, 2012
Chizhik Variance (PA2012-113)

From: Tim Stoaks [<mailto:timstoaks@sbcglobal.net>]
Sent: Tuesday, November 06, 2012 12:47 PM
To: Brandt, Kim
Cc: Gary Hall; Gary Golson; Jayne Jones; Loren Blackwood; Mary Slouka; Richard Dayton; Richard Moriarty
Subject: 20361 SW Cypress Street -Deny application for variance

RE:

ITEM NO. 3 Chizhik Variance (PA2012-113)

Site Location: 20361 SW Cypress Street

Summary:

The applicant is requesting a variance to allow existing hedges and block walls topped with lattice panels, which exceed the Zoning Code height limits within setbacks (sides – 6 feet, front – 42 inches), to remain in place along the side property lines.

Planning Commission

I urge you to **deny the application for variance allowing block wall and Lattice panels which were constructed in direct conflict to the SAH specific plan.** the Specific Plan is the work of a great many folks that served to develop the specific plan for Santa Ana Heights via the SAHPAC. These regulations were vetted with much community out reach, meetings and input from design and architectural sub committees that were part of the SAHPAC. The requirement are consistent with the established character of both the SAH Business Park and the Residential areas.

As the former Chairman of the SAHPAC, this is not the first application that has been requested. Before the sunseting of the SAHPAC the Architectural sub committee has written comment that this type of variance greatly affects the larger sites and that with the mansionising of the sites along Cypress and Mesa Dr. would negatively impact the aesthetic of the neighborhood.

Thank you for your consideration on this matter.

Tim Stoaks

Former SAHPAC Chairman

2181 Mesa Dr

Newport Beach Ca 93660

CC: SAHPAC

To: PLANNING_COMMISSION
Subject: Additonal Materials Received

Item 3b: Additional Materials Received
Planning Commission – November 8, 2012
Chizhik Variance (PA2012-113)

From: cashwho@aol.com [<mailto:cashwho@aol.com>]
Sent: Tuesday, November 06, 2012 1:30 PM
To: Brandt, Kim
Subject: 20361 SW Cypress Street -Deny application for variance

ITEM NO. 3 Chizhik Variance (PA2012-113)

Site Location: 20361 SW Cypress Street

Summary:

The applicant is requesting a variance to allow existing hedges and block walls topped with lattice panels, which exceed the Zoning Code height limits within setbacks (sides – 6 feet, front – 42 inches), to remain in place along the side property lines.

Dear Planning Commission

I own the property at 20341 Cypress and can see this monstrosity of a wall in question from my property. I feel for my neighbor whose property abuts this wall. Even the block wall itself is more than six feet, then add the lattice and plantings and the result is more than just unsightly. My neighbors back yard looks like a racquetball court with this huge unsightly block wall. I witnessed how the yard at 20361 was filled in with dirt to raise the original grade of this property which resulted in such a high wall on the neighboring property. I urge you to deny the application for the variance allowing the block wall and lattice panels that do not comply with the SAH specific plan guidelines. Additionally, the fencing along the property line in front also blocks the view of the multi purpose trail making access from the driveway unsafe.

These improvements are not allowed and should not be granted a variance to continue. If you grant this variance to this property, then will I be allowed to do the same on my property? If that were to occur, the property owner at 20351 would have 10 foot walls on each side of his property. Is that truly something that we should allow to happen to anyone?

Thank you for your consideration on this matter.

Holly Jarvis
20341 Cypress Street

To: PLANNING_COMMISSION
Subject: Additional Materials Received

Item No. 3c: Additional Materials Received
Planning Commission November 8, 2012
Chizhik Variance (PA2012-113)

From: Alyson Michie [<mailto:gallomichie@hotmail.com>]
Sent: Tuesday, November 06, 2012 1:43 PM
To: Brandt, Kim
Subject: 20361 SW Cypress Street

To Whom it May Concern: I live right across the street at 20362 SW Cypress Street. I take issue with the height Mr Gennady & Mrs Marina Chizhik have in mind for their property located at 20361 SW Cypress Street. My objection is; it is not in accordance with our height limit of 6 feet and begins a process in the break down of a friendly neighborhood. My vote is no to their desire for an adjustment to height limitation. Best regards, Alyson

To: PLANNING_COMMISSION
Subject: Additional Materials Received

Item No. 3d: Additional Materials Received
Planning Commission November 8, 2012
Chizhik Variance (PA2012-113)

From: Dirt Loving [<mailto:dirtloving@gmail.com>]
Sent: Tuesday, November 06, 2012 4:09 PM
To: Brandt, Kim
Subject: ITEM NO. 3 Chizhik Variance (PA2012-113)

At First Blush, I lean towards allowing people do what they want with their own property, until it affects others. I feel that is clearly the case, in this situation. Obviously the underlying block wall exceeds height restrictions set forth by City of Newport AND the County of Orange, and the attached lattice makes the violation even greater. Not only is it illegal & unattractive, it deprives neighbors of the wonderful ocean breezes we are privileged to enjoy in this area & which they did previously enjoy prior to the building of this wall.

It is my firm position that this fence should adhere to the maximum of six feet in height, and its measurement, per the City of Newport Beach Municipal Code, “shall be measured from the existing grade prior to construction at the location where the fence, hedge, or wall is located.” Since many tons of fill were brought in to artificially raise the grade, it would require a much shorter fence than what currently stands. As a building contractor, Mr. Chizhik knew, yet flagrantly disregarded these height restrictions and for this reason alone, the variance should be denied.

Moreover, if the Chizhik’s did not like the rural/equestrian nature of this neighborhood, or the noise of the airport, they should not have purchased, and *then built* a home here. As it took two years (plus an additional year, prior to construction) to build this home, they were **VERY well aware** of the airport & dust, **long before they moved in**. We all have the right to choose where to live. If we don’t like the dirt of a rural neighborhood & the noise of an adjacent airport, perhaps one should choose a different location to build a home...

Please simply enforce the existing height limitations on residential fences & walls and do not grant a variance for this property.

Most Sincerely,
G. Stout

To: PLANNING_COMMISSION
Subject: Additional Materials Received

Item 3e: Additional Materials Received
Planning Commission November 8, 2012
Chizhik Variance (PA2012-113)

From: Emily Vogler [<mailto:emilycv@roadrunner.com>]
Sent: Tuesday, November 06, 2012 9:12 PM
To: Brandt, Kim; Dept - City Council
Cc: jghall@fea.net; caikenpie@mac.com; bkbaycuvee@sbcglobal.net; wwfwmblds@aol.com; rdayton@juno.com; gggolson@hotmail.com; nbvineyards@adelphia.net; Barbara Venezia; timstoaks@sbcglobal.net
Subject: 20361 SW Cypress Street -Deny application for variance

RE:

ITEM NO. 3 Chizhik Variance (PA2012-113)

Site Location: 20361 SW Cypress Street

Summary:

The applicant is requesting a variance to allow existing hedges and block walls topped with lattice panels, which exceed the Zoning Code height limits within setbacks (sides – 6 feet, front – 42 inches), to remain in place along the side property lines.

I object to granting this variance because my property has suffered from a similar situation where a neighboring property owner erected an oversize fence that was later approved by Newport Beach despite objections from me and many longtime property owners and residents because such fences adversely impact neighboring properties. I look at the 12 foot tall cement block wall bordering my yard and its prison yard ambiance every morning, thanks to the city of Newport Beach and its ignoring un-permitted landfill on the neighboring property and the oversize fence built on it, and while the subject wall has some landscaping to soften the effect, it still hems in the adjacent properties. The specific plan of our neighborhood was established with much input and consideration of the residents and allowing new construction to impose towering walls on neighboring homes is to neglect the aesthetic of the neighborhood. I have a question for the city council- are such tall walls allowed in other city neighborhoods? I have other properties in Newport Beach and do not see such imposing fencing separating homes in other areas of the city.

Emily Crean Vogler

--

Emily Vogler
emilycv@roadrunner.com

I have no objections to the height of the constructed wall, including trellis and planted trees located at 20361 SW Cypress, Newport Beach, CA 92660. They are beneficial to both my neighbor and I in minimizing airplane noise, absorbing dust, and ensuring privacy.

RICHARD M. LETHN
Name: *Richard M. Lethn*

Date: *11-6-2012*

CLARICE D. LETHN
Signature: *Clarice D. Lethn*

Address: *20352 SW CYPRESS*
NPB, CA 92660

I have no objections to the height of the constructed wall, including trellis and planted trees located at 20361 SW Cypress, Newport Beach, CA 92660. They are beneficial to both my neighbor and I in minimizing airplane noise, absorbing dust, and ensuring privacy.

Name: Kelly Holcomb

Date: 11/5/12

Signature: [Handwritten Signature]

Address: 20411 Cypress St.

I have no objections to the height of the constructed wall, including trellis and planted trees located at 20361 SW Cypress, Newport Beach, CA 92660. They are beneficial to both my neighbor and I in minimizing airplane noise, absorbing dust, and ensuring privacy.

Name: Mary Mackley

Date: 11/06/12

Signature: Mary Mackley

Address: 20354 SW Birch St., Newport Beach, Ca
92660

To: PLANNING_COMMISSION
Subject: Additional Materials Received

Item No. 3g: Additional Materials Received
Planning Commission November 8, 2012
Chizhik Variance (PA2012-113)

From: Clifford N Gibran [<mailto:cliffordngibran@gmail.com>]
Sent: Wednesday, November 07, 2012 1:08 PM
To: Brandt, Kim
Subject: ITEM NO. 3 Chizhik Variance (PA2012-113)

I think ANY building contractor, especially one that has done work for the City of Newport Beach, should be held to a "higher standard" when it comes to adhering to building and zoning regulations. Everyone knows fences of this height are not allowed in residential areas. However, this contractor chose to ignore building/zoning regulations and build what they wanted. Clearly he felt the rules did not apply to him.

It is HIGHLY UNacceptable for illegal construction activity to be ultimately REWARDED with a permit! What sort of message does this send?

Any action OTHER than DENYING these homeowners "permission" for their illegal actions would be a clear indicator of preferential treatment by the City of Newport Beach.

Most Sincerely,
CM Stout
Neighborhood resident

I have no objections to the height of the constructed wall, including trellis and planted trees located at 20361 SW Cypress, Newport Beach, CA 92660. They are beneficial to both my neighbor and I in minimizing airplane noise, absorbing dust, and ensuring privacy.

Name: Sandee Felix

Date: Nov 5, 2012

Stacey Felix
Signature: Sandee Felix

New owners at:

Address: 2231 Mesa Dr.
Newport 92660

We love it!!!

RECEIVED BY
COMMUNITY
NOV 07 2012
DEVELOPMENT
CITY OF NEWPORT BEACH

Item No. 3i: Additional Materials Received
Planning Commission November 8, 2012
Chizhik Variance (PA2012-113)
Presented by Applicant During Public Comments





Item No. 3i: Additional Materials Received
Planning Commission November 8, 2012
Chizhik Variance (PA2012-113)
Presented by Applicant During Public Comments